REMARKS

Applicants have amended claims 4, 6, 7, 13, 36-44, and 52 to correct typographical errors and clarify ambiguities, claims 1-3, 8-11, 13, 14, 37, 39-44, and 52 to further clarify some unique aspects of the present invention, and claims 1-4, 6, 7, 11-14, 36-44, and 52 to further clarify that the invention is implemented in a computer apparatus. Applicants have cancelled claims 15-34, 45-51, and 53-59 without prejudice in response to Examiner's restriction requirement. Applicants have also cancelled claim 35, and added new claims 60-63 to further clarify some unique aspects of the present invention. No new matter has been added. Claims 1-14, 36-44, 52, and 60-63 are now pending in this application.

In the Office Action dated March 11, 2004, the Examiner required restriction to claims 1-14, 35-44, and 52, drawn to a method and related system for pricing a transaction.

Applicants hereby elect claims 1-14, 35-44, and 52, drawn to a method and related system for pricing a transaction without traverse. Applicants expressly reserve the right to the non-elected subject matter including the right to file one or more continuation and/or divisional applications to that subject matter, as now embraced in non-elected claims 15-34, 45-51, and 53-59.

In the Office Action dated March 11, 2004, the Examiner objected to claims 7, 35, 41, and 44 due to various "informalities," and rejected claims 3, 8, 9, 37, 39, and 43 under 35 U.S.C. 112 as being indefinite, claims 1-14, 42-45, and 52 under 35 U.S.C. 101 as being directed to non-statutory subject matter, and claims 1-14, 35-44, and 52 under 35 U.S.C. 102(b) as being anticipated by Boesch et al. (U.S. Patent No. 5,897,621).

The undersigned has reviewed the March 11, 2004, Office Action and respectfully traverses all rejections for the reasons set forth herein. The undersigned respectfully requests that all pending claims, as amended, be allowed.

A. Overview

Before addressing the merits of the rejection, some brief comments reviewing the invention may be helpful. The following comments are provided exclusively to facilitate the Examiner's review of the invention.

The present invention relates to risk management methods and systems for facilitating an e-commerce transaction wherein the participants to the transaction engage in commerce using different currencies. An automated sales risk management system facilitates a transaction by providing a price of a transaction which incorporates aggregated costs related to the transaction into a price made available to the participants. A currency risk management system receives an amount of currency relating to the price of a deliverable involved in a transaction and determines a cost for credit to be extended to a buyer based on elements of the transaction, which can include, by way of non-limiting example, the identity of a participant in the transaction, the deliverable, the projected volume of currency to be transacted, and the projected volume of the deliverable to be transacted. (Specification, page 4, lines 15-21, page 20, lines 13-17.)

A cost for exchange of currency relating to the transaction can be calculated and based upon elements of the transaction, which can include, by way of non-limiting example, the identity of a participant in the transaction, the deliverable, the projected volume of currency to be transacted, and the projected volume of the deliverable to be transacted. (Specification, page 20, lines 17-21; Specification of U.S. Patent Application No. 09/526,606 entitled "Online Sales Risk Management System" (incorporated by reference into the present application), page 2, lines 14-25, page 7, lines 24-26.) The cost for exchange of currency can be included in a price for the deliverable, such that the price will include an aggregate of the cost of credit involved in the transaction, the cost for exchange of currency relating to the transaction, and the amount of currency relating to the price of the deliverable. In addition, the currency risk management system can transmit a calculated price to a participant via a network access device. (Specification, page 4, lines 22-26.)

Cost for the exchange of currency can include a volume discount term relating to an aggregate notional volume associated with a participant of the transaction. The notional volume

can be calculated on a periodic basis. The cost of exchange of currency can also be discounted according to a volume discount term relating to an aggregate number of transactions associated with a participant of the transaction, and/or a payment history associated with a participant of the transaction. (Specification, page 4, line 27-page 5, line 3.)

In some embodiments, the present invention can determine an exchange price according to a tolerance parameter for a foreign currency in which the amount relating to the deliverable is denominated. The exchange price can relate the foreign currency to a base currency and receive a spot price relating to exchange of a foreign currency. If the spot price exceeds the tolerance parameter, the exchange can be renegotiated. A set exchange price can also be made valid for a predetermined time period for which the exchange price has been set. Accordingly, if the transaction will take place during the predetermined time period, the set exchange price can be applied. (Specification, page 5, lines 4-11.)

The present invention can also be configured to limit risk associated with fluctuations in a currency price offered by a currency exchange institution to an e-commerce participant. Fluctuations in currency price can be caused, for example, by fluctuations in the market or spot price of the currency. The currency exchange institution can limit risk associated with such fluctuation by setting the currency price at a specified rate and adjusting the specified rate if delta between the market price and the specified rate exceeds a predetermined threshold. The currency exchange institution can then monitor the market price of the relevant currency, and if market price exceeds a certain tolerance that is either above or below the specified rate, the currency price can be re-negotiated. Re-negotiation of the currency price may take place in any means set forth by the parties, for example in face-to-face discussions, by telephone, by email, or automatically by a computer according to agreed upon terms. (Specification, page 6, lines 6-16.)

Functions associated with tolerance initiated price negotiation including the monetary conversions, periodic monitoring of spot price, comparison with set parameters, and adjustment of the set currency price can be performed by a currency exchange risk management system. Additionally, the currency exchange institution can monitor the spot price continuously or at various time intervals and either alert interested parties when the tolerance is exceeded, or

automatically adjust the specified rate according to a predetermined algorithm. The present invention thereby accounts for fluctuations in the market price of the relevant currency and provides stability for the currency price within a given range. (Specification, page 6, lines 17-24.)

B. Examiner's Objections

The Examiner has objected to claims 7, 35, 41, and 44 due to various "informalities." Applicants have amended claims 7, 41, and 44 to correct typographical errors and address the Examiner's rejection. Applicants have cancelled claim 35.

C. Examiner's Rejection Under 35 U.S.C. 112

The Examiner has rejected claims 3, 8, 9, 37, 39, and 43 under 35 U.S.C. 112 as being indefinite. Applicants have amended claims 8, 9, 39, and 43 to correct typographical errors, clarify ambiguities, and address the Examiner's rejection. Regarding the Examiner's question concerning the limitation of price detail in claims 3 and 37, Applicants respectfully submit that such a limitation is not redundant nor indefinite because the limitation indicates that the price detail comprises information comprising the individual value for each of the three listed components, whereas the limitation of price in claims 1 and 35 indicates that the price comprises an aggregate or sum total of the three listed components.

D. Examiner's Rejection Under 35 U.S.C. 101

The Examiner has rejected claims 1-14, 42-45, and 52 under 35 U.S.C. 101 as being directed to non-statutory subject matter. Specifically, the Examiner has stated that claims 1-14 lack reference to technology, claims 42-43 and 52 are directed to a non-significant use of technology, and claim 44 is directed to non-functional descriptive material. Applicants respectfully traverse this rejection for the reasons below, and request allowance of the claims as amended.

In order to remove the Examiner's concerns and to expedite the issuance of the pending claims, Applicants have amended claims 1-4, 6, 7, 11-14, 36-44, and 52 to further clarify that the invention is implemented in a computer apparatus.

However, Applicants note that even if Ex parte Bowman, 61 USPQ2d 1669, 1671 (Bd. Pat. App. & Inter. 2001) (Unpublished), which the Examiner has cited to "illustrate the Patent Office's current position," was binding on the Board of Patent Appeals and Interferences (which the Examiner acknowledged is not the case), Bowman would not apply to the application at hand. In Bowman, it was found that neither the specification nor the claims discussed the use of any technology with respect to the claimed invention. In Bowman, the Court found no indication on the record that the invention was connected to a computer in any manner and relied upon this absence of any connection to a computer to find that the claims were not directed to statutory subject matter.

The concurring opinion in Bowman provides further insight into the reasoning of the Board in cases which are precedential, such as State Street Bank & Trust Co. v. Signature Financial group, Inc., 149 F.3d 1368, 1374-75, 47 USPQ2d 1596, 1602 (Fed. Cir. 1998) and AT&T Corp. v. Excel Communications Inc., 172 F.3d 1352, 1355, 50 USPQ2d 1447 (Fed. Cir. 1999). In the concurring opinion, Judge Dixon relied on State Street and AT&T to illustrate that the Bowman invention was directed to non-statutory subject matter because the process was not tied to an apparatus, such as a computer, either expressly or implicitly. Applicants respectfully point out that Applicants' claimed invention is clearly tied to a computer apparatus with a concrete use which is not an abstract idea.

The specification discloses a network of computers that can be used in some embodiments of the invention. According to the specification, the network can include a transaction facilitator system and exchange system participant network access devices. Each of the network access devices can include a processor, memory, a user input device, such as a keyboard and/or mouse, and a user output device, such as a video display and/or printer. The exchange system participant network access devices can communicate with the transaction facilitator system to obtain information stored as data on a storage medium at the transaction

facilitator. In addition, a participant operating a network access device can complete a transaction with a transaction facilitator system, which can include multiple processing and database sub-systems, such as cooperative or redundant processing and/or database servers which can be geographically dispersed throughout the network. In some implementations, two or more customer computers can communicate with other nodes through a local network. The local network can also include a local server such as a proxy server or a caching server. (Page 12, lines 12-26, Figure 2.) A person skilled in the arts would understand the described system to be computer apparatus, which ties the invention to the "technological arts" as stated in Bowman.

Claims 1-14, 42, 43, and 52 are clearly stated to be "computer implemented" methods, and claim 44 clearly discloses a "computer data signal," and therefore require the use of one or more computer devices (as described on page 12 of the specification) which provides a nexus to a technological art. The Federal Circuit has recognized that claims that require the use of "switches and computers" are statutory subject matter whether the claimed invention is a process or a machine. AT&T, 50 USPQ2d at 1449-1450.

Accordingly, Applicants respectfully traverse the 35 U.S.C. 101 rejection based upon a need for additional nexus to a technological art, and retain the right to pursue other claims which may or may not include similar claim language in one or more continuation and/or divisional applications.

E. Examiner's Rejection Under 35 U.S.C. 102(b)

The Examiner has rejected claims 1-14, 35-44, and 52 under 35 U.S.C. 102(b) as being anticipated by Boesch et al. (U.S. Patent No. 5,897,621). Applicants respectfully traverse this rejection for the reasons below, and request allowance of the claims as amended.

Boesch is directed to a system and method for determining approval of a multi-currency transaction between a customer and merchant over a network. Basically, Boesch discloses a system in which (1) a seller submits a sale price in the seller's currency to an intermediary, (2) a buyer submits a purchase price in the buyer's currency to the intermediary, (3) the intermediary converts the purchase price from the buyer's currency to the seller's currency, and (4) the

intermediary approves the transaction if the converted purchase price is within an acceptable range of the sale price in the seller's currency. (Abstract; col. 2, line 56-col. 3, line 36; claims 1, 6, 11, 16, 22-24.)

Specifically, in Boesch, a transaction is approved if an amount offered by a customer is within a "risk range" of a product price specified by the merchant. Boesch describes an embodiment where the customer makes an offer in a first currency, the merchant sets the product price in a second currency, a computer server determines if the offer amount is within a "risk range" of the product price, and if the offer amount is within the risk range, the server approves the transaction. (Col. 2 line 63 – p. 3 line 42.)

In Boesch, the customer calculates the offer amount in the merchant currency. The customer must download currency conversion rates prior to a "session" in which the customer can make an offer. The customer estimates an offer amount by using a customer computer to convert one or more customer currency amounts into an amount denominated in a merchant preferred currency. If the customer waits too long, or makes a calculation mistake, the customer may end up making an unacceptable offer, in which case the customer must recalculate what may or may not be an acceptable offer, and resubmit successive offers until an offer is accepted, or the customer gives up.

The methods and systems described in Boesch actually serve as a wonderful example of what is wrong with the prior art. The Boesch patent describes a cumbersome and inexact process in which a customer must download currency exchange rate data and try to estimate an offer amount in a customer currency which will convert to an acceptable amount in a merchant perferred currency. Boesch therefore requires a level of sophistication and processing power that is beyond the capabilities of many potential customers, and also introduces a high level of risk that the customer will err in its calculations. Although theoretically feasible, in many aspects, the methods and systems described in Boesch simply aren't realistic for widespread use in the business world.

The present invention enables a seller to present to a customer a sales price for a deliverable which is already denominated in the customer preferred currency, and which includes

the cost of the deliverable, the cost of foreign exchange and the cost of credit. Essentially, in the present invention, the sales transaction for the deliverable is conducted with the foreign exchange aspect and the credit aspect remaining transparent to the transaction participants.

As dislcosed in the currently pending claims, the present invention accomplishes such transparent foreign exchange and credit cost calculations with at least five unique aspects that are not described or suggested in Boesch.

First, the present invention discloses a currency exchange price which is effective for amounts of currency transacted in one or more transactions for a deliverable. (See, e.g., claim 61.) As such, the present invention enables a currency exchange provider to account for elements and factors of the transactions, including by way of non-limiting example, the currencies involved, the relationship between the buyer and the financial institution providing the currency exchange, a volume of currency transacted, the volume of deliverables transacted, and market trends when determining the currency exchange rate. (Specification, page 20, lines 18-21.) Determining a currency exchange rate in this fashion brings predictability to the marketplace and allows both buyer and seller to understand a price for a deliverable, each in their own currency.

Second, the present invention discloses a predetermined period of time during which the currency exchange price will be effective. This aspect also brings predictability to the marketplace for both buyer and seller, and allows both buyer and seller to rely that during such period of time, the price of the deliverable will not change due to fluctuating currency exchange rates.

Third, the present invention claims receiving digital data which describes a price of a deliverable as an amount of a first currency, and calculating the price of the deliverable in a second currency according to the exchange rate described above.

Fourth, the present invention includes determining a cost of credit which is extended to a buyer and based upon factors and elements of the transaction. This allows a credit lender to consider particulars, such as the volume of currency transacted, the volume of deliverables transacted, the period allowed until repayment, the rate of interest, the credit history of the buyer,

and the volume of business the buyer has historically transacted. (Specification, page 20, lines 14-17.)

Fifth, the present invention provides calculating an aggregate price that includes the cost of credit extended in the transaction, the cost for exchange of currency in the transaction and the amount of currency relating to the price of the deliverable. In essence, the present invention teaches methods and systems that let the unsophisticated buyer see the total cost of a transaction in their own currency. Such a buyer only needs to be capable of operating a network access device.

Boesch does not describe or claim any of these five aspects, and requires a buyer with a high level of sophistication. Boesch simply does not teach calculating, determining, displaying, receiving or transmitting the costs of extending credit or exchanging currency, nor does Boesch aggregate such values into a price of a deliverable in a foreign currency. As dicussed above, the present invention teaches these steps. For these reasons as well as additional reasons discussed below, Applicants respectfully submit that Boesch does not anticipate the present invention.

As the Federal Circuit instructs "anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." W.L. Gore & Assocs. V. Garlock, Inc., 721 F.2d 1540 (Fed. Cir. 1983). Furthermore, the prior art reference must disclose each element of the claimed invention "arranged as in the claim." Lindermann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452 (Fed. Cir. 1984). Thus, in order for the present rejection under 35 U.S.C. 102(b) to be proper, the Boesch reference "must clearly and unequivocally disclose the claimed [invention] without any need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the cited reference." In re Arkley, 455 F.2d 586, 588 (C.C.P.A. 1972).

In stating his rejections of independent claims 1, 35, 41, 42 (as amended), 44, and 52, the Examiner has done no more than recite portions of the present application's claims verbatim, while conveniently omitting those elements that are not present in Boesch, and provide cites to Boesch without explanation of how those cites, or any of Boesch at all, anticipate the elements of claims 1, 35, 41, 42, 44, and 52.

Specifically, the Examiner declined to include in his recitation of claims 1, 35, 41, 42, 44, and 52, the steps of determining, calculating, receiving, and displaying the costs of extending credit and exchanging currency, and aggregating such values into a price of a deliverable in a foreign currency. Similarly, as discussed above, Boesch lacks these elements as well. As such, Boesch cannot and does not anticipate the claimed invention.

Claims 2-14 and 60 depend from independent claim 1, claims 36-40, 62, and 63 depend from independent claim 61, and claim 43 depends from independent claim 42, and define further features and structure of the method and system, respectively. As such, these claims are patentable for the reasons noted above with respect to claims 1, 41, 42, 44, 52, and 61, as well as for the additional features recited therein. Accordingly, notice to the effect that claims 1-14, 36-44, 52, and 60-63 are in condition for immediate allowance is respectfully requested.

CONCLUSION

Allowance of this application, as amended, is courteously urged.

Respectfully submitted,

Date: May 24, 2004

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